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Paper No. 4

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SEP 25 2000

In re Application of
Sheryl Behar et al.
Application No. 09/469,993
Filed: December 22, 1999
Attorney Docket No. 03184/06

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: DECISION REFUSING STATUS
: UNDER 37 CFR 1.47(a)
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This is in response to the "Petition Under 37 CFR 1.47(a)," filed July 11, 2000.

The petition is dismissed.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **FAILURE TO RESPOND WILL RESULT IN ABANDONMENT OF THE APPLICATION.** Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed on July 11, 2000 without an executed oath or declaration and naming Sheryl Behar, Carol Lewbell-Gray and Cheryl Cunha as joint inventors.

Accordingly, on February 11, 2000, a "Notice to File Missing Parts of Application" was mailed, requiring an executed oath or declaration, filing fee, and a surcharge for their late filing.

In response, on July 11, 2000, petitioner filed a \$130.00 surcharge fee, a three month extension of time fee of \$870.00, \$760.00 in filing fees, \$324.00 for the extra claims, a Declaration, Power of Attorney and Petition signed by inventors Sheryl Behar and Cheryl Cunha, a Declaration and Statement of Facts from inventor Sheryl Behar, the instant petition and petition fee of \$130.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having

been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. Applicant lacks item (1) set forth above.

As to item (1), the declaration of Sheryl Behar, one of the co-inventors, states that she "made several follow-up telephone calls to Ms. Lewbell-Gray over the next several months to ask her to sign and return the executed Declaration, Power of Attorney and Petition," but that she never received the required papers from her. Because of the fact that Ms. Lewbell-Gray is no longer employed by Citibank due to job discontinuance, Mr. Behar states that she believes Ms. Lewbell-Gray will not cooperate and sign the Declaration.

Rule 47 applicant appears to demonstrate that Ms. Lewbell-Gray was only presented with the declaration. Unless Ms. Lewbell-Gray was presented with a copy of the entire application papers (specification, claims and drawings), Ms. Lewbell-Gray could not attest that she has "reviewed and understands the application papers" and therefore could not sign the declaration which she was given.

Accordingly, Rule 47 applicant has failed to adequately show or provide proof that the inventor has refused to sign the declaration. Did Ms. Lewbell-Gray receive the application papers? See Manual of Patent Examining Procedure, Section 409.03(d). A copy of the application papers should be sent to the last known address of Ms. Lewbell-Gray, with a request that she sign the declaration for the patent application. A forwarding address should be requested, if the papers are returned. Should Ms. Lewbell-Gray then refuse to sign the papers, a copy of the itemized transmittal letter, and a copy of the receipt showing proof of service on Ms. Lewbell-Gray, should be submitted with any renewed petition. Should Ms. Lewbell-Gray not reply after having been presented with a copy of the complete application papers, then Rule 47 applicant will have established that the inaction of Ms. Lewbell-Gray constitutes a refusal to sign. Should Ms. Lewbell-Gray indicate orally that she still refuses to sign the papers, then a statement from the person to whom the refusal was made is also required, along with the place and time. If the refusal is in writing, then a copy of that document is required.

In order to expedite consideration of the petition under 37 CFR 1.47(a), petitioner may wish to consider submitting the renewed petition by facsimile transmission to the telephone number indicated below and to the attention of Wan Laymon.

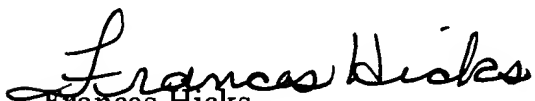
Further correspondence with respect to this matter should be addressed as follows:

By mail: Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

By FAX: (703) 308-6916
Attn: Special Program Law Office

By hand: Crystal Plaza Four, Suite 3C23
2201 S. Clark Place
Arlington, VA

Telephone inquiries related to this decision should be directed to Wan Laymon at (703) 306-5685.


Frances Hicks
Lead Petitions Examiner
Office of the Deputy Commissioner
for Patent Examination Policy